

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

11 MYA DUNN,)
12 Plaintiff,)
13 v.) No. CV-05-116-HU
14 CSK AUTO, INC., an Arizona)
corporation, dba SCHUCK'S AUTO))
SUPPLY,) OPINION
16 Defendant.)
17 _____)

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25 HUBEL, Magistrate Judge:

26 Plaintiff Mya Dunn brought this employment discrimination
27 action against her former employer Schuck's Auto Supply. Plaintiff
28 brought three claims: a Title VII pregnancy discrimination claim,

1 a parallel pregnancy discrimination claim under Oregon Revised
2 Statutes §§ (O.R.S.) 659A.029, 659A.030¹, and a common-law wrongful
3 discharge claim based on an allegation that defendant terminated
4 her in retaliation for her exercise, or attempted exercise, of
5 rights under the Oregon Family Leave Act.

6 The Title VII and wrongful discharge claims were tried to a
7 jury. The Oregon statutory claim was simultaneously tried to the
8 Court. See O.R.S. 659A.885. Additionally, I reserved the issue of
9 economic damages on the Title VII claim, to the Court. Lutz v.
10 Glendale Un. High Sch., 403 F.3d 1061, 1069 (9th Cir. 2005)
11 (plaintiff has no right to have jury determine the appropriate
12 amount of back pay under Title VII, even after the Civil Rights Act
13 of 1991; back pay remains an equitable remedy to be awarded by the
14 district court in its discretion).

15 The jury returned a verdict in plaintiff's favor on the Title
16 VII claim, awarding her \$225,000 in compensatory damages, and
17 \$250,000 in punitive damages. However, based on the parties' oral
18 stipulation following receipt of the verdict, the Judgment in this
19 case will reflect a \$300,000 total damages award to plaintiff on
20 the Title VII claim pursuant to the statutory cap found in 42
21 U.S.C. § 1981a(b)(3)(D). The jury returned a verdict in
22 defendant's favor on the wrongful discharge claim.

23 This Opinion constitutes my Findings of Fact and Conclusions
24 of Law on the liability and damages on the Oregon statutory claim
25 and on the economic damages portion of the Title VII claim. Fed.
26

27 ¹ O.R.S. 659A.030 prohibits employment discrimination
28 "because of sex" and O.R.S. 659A.029 defines "because of sex" to
include pregnancy.

1 R. Civ. P. 52(a).

2 I. Oregon Statutory Claim - Liability

3 In this case, the factual issues relevant to the jury's
 4 decision on the Title VII claim are identical to the issues
 5 relevant to my determination on the O.R.S. 659A.030 claim. As
 6 explained by the Ninth Circuit:

7 The Seventh Amendment provides that "no fact tried by a
 8 jury shall be otherwise re-examined in any Court of the
 9 United States, than according to the rules of the common
 10 law." This court has held that "it would be a violation
 11 of the seventh amendment right to jury trial for the
 12 court to disregard a jury's finding of fact." Floyd v.
Laws, 929 F.2d 1390, 1397 (9th Cir. 1991). Thus, in a
 13 case where legal claims are tried by a jury and equitable
 14 claims are tried by a judge, and the claims are "based on
 the same facts," in deciding the equitable claims, "the
 12 Seventh Amendment requires the trial judge to follow the
 13 jury's implicit or explicit factual determinations."
Miller v. Fairchild Indus., 885 F.2d 498, 507 (9th Cir.
 1989), cert. denied, 494 U.S. 1056, 110 S. Ct. 1524, 108
 L. Ed. 2d 764 (1990).

15 Los Angeles Police Protective League v. Gates, 995 F.2d 1469, 1473
 16 (9th Cir. 1993).

17 Here, because the federal and state statutory discrimination
 18 claims are based on the same facts, the jury's implicit factual
 19 determinations regarding liability are preclusive.

20 Additionally, the legal standards for the state law claim
 21 under O.R.S. 659A.030 parallel those for Title VII. Jaurrieta v.
Portland Pub. Schs., No. CV-00-1238-ST, 2001 WL 34041143, at *7 and
 23 n.12 (D. Or. Dec. 14, 2001) (analyzing O.R.S. 659.030 hostile
 24 environment claim under Title VII standards and noting that Oregon
 25 courts generally consider and adopt federal case law regarding
 26 Title VII), adopted by Judge Brown (D. Or. Feb. 7, 2002); see also
 27 Logan v. West Coast Benson Hotel, 981 F. Supp. 1301, 1319 (D. Or.
 28 1997) (in analyzing Oregon discrimination claims under Chapter 659,

1 Oregon courts have looked to Title VII cases for guidance because
2 Oregon statutes are "wholly integrated and related" to Title VII).

3 Thus, with the same legal standards and the relevant facts
4 implicitly determined by the jury given preclusive effect, I
5 conclude that defendant violated O.R.S. 659A.030 when it terminated
6 plaintiff in January 2004.

7 II. Damages for the Title VII and Oregon Statutory Claims

8 Plaintiff seeks both past and future lost wages in connection
9 with her Title VII claim. Sec. Am. Pretrial Order at ¶¶ 10, 11.
10 She bases her lost future wage claim on her contention that
11 reinstatement is not feasible. *Id.* at ¶ 11.

12 She seeks economic, non-economic, and punitive damages in
13 connection with her O.R.S. 659A.030 claim. *Id.* at ¶ 5, 8. The
14 relevant statute, however, limits the relief for the state claim to
15 injunctive and equitable relief, including back pay and attorney's
16 fees. O.R.S. 659A.885. No other economic damages, no non-economic
17 damages, and no punitive damages, are allowed. *Id.* She also seeks
18 a declaration that defendant acted in violation of O.R.S. 659A.030,
19 and attorney's fees. *Id.* at ¶¶ 6, 7. My conclusion above that
20 defendant violated O.R.S. 659A.030 when it terminated plaintiff in
21 January 2004 accords plaintiff the declaratory relief sought on
22 that claim. Plaintiff has voluntarily dismissed her claim for
23 injunctive relief.

24 During the trial, I concluded that the evidence on any claim
25 for future lost wages in connection with the wrongful discharge
26 claim, was insufficient to send to the jury. Plaintiff testified
27 that she voluntarily withdrew from the workforce, and specifically
28 from seeking employment, in January 2006. She indicated that she

1 was frustrated with the inability to find work.

2 When asked if she was going to look for work again, plaintiff
3 said "[i]n September, when my kids go back to school and preschool,
4 I need to -- for myself, I need that part of it. I need to be
5 needed outside the home. . . . I seem to be a better mom if I've
6 got other things to focus on also."

7 Plaintiff limited her past lost wages claim to the period of
8 mid-January 2004 through mid-January 2006. I determined that her
9 testimony that she might start to look for work again in September
10 2006 was simply too speculative to form the basis of a future lost
11 wage claim, and as discussed below, that testimony also comes into
12 play in the issue of mitigation of damages. My conclusion applies
13 to the Title VII future lost wage claim as well. Accordingly, I
14 consider only plaintiff's claim for past lost wages (on the Title
15 VII and O.R.S. 659A.030 claims) and I make no award of future lost
16 wages on the Title VII claim.

17 The evidence was that plaintiff's annual salary at the time of
18 discharge was \$31,416.95. Exh. 63 (employer printout of
19 plaintiff's compensation rate); Exh. 7 (handwritten note on "Case
20 and Interview Information Sheet" indicating salary of \$31,417);
21 Trial Testimony of Deft's Voc. Rehab. Expert Hank Lageman (noting
22 that plaintiff's annual salary was \$30,000 - \$31,000 per year).
23 According to the employer printout of her compensation rate, her
24 monthly salary at the time of discharge was \$2,618.08. Exh. 63.

25 Plaintiff testified that in the two years following her
26 discharge until she voluntarily abandoned her search for employment
27 in January 2006, she applied for eight to twelve jobs. The
28 undisputed testimony of defendant's expert Lageman was that a

1 reasonable person in plaintiff's circumstances would apply for at
2 least two jobs per day. He noted that the search for a job should
3 resemble close to full-time work. He also stated that typically,
4 it would take a person in plaintiff's position sixty to ninety days
5 to find another job, and at most, six months. This testimony was
6 undisputed.

7 Plaintiff has the duty to use reasonable efforts to mitigate
8 damages. Defendant has the burden of proving that plaintiff failed
9 to use reasonable efforts to mitigate damages. Based on
10 plaintiff's and Lageman's testimony, I conclude that plaintiff's
11 efforts to find substantially equal employment following her
12 termination were not reasonable. I note that had plaintiff used
13 reasonable efforts to find suitable employment after her
14 termination, she may not have taken herself out of the job market
15 in January 2006. Thus, her failure to conduct a reasonable job
16 search affects both her lost past wage claim and her lost future
17 wage claim.

18 Considering that it reasonably may take some period of time to
19 begin to search for new employment (targeting likely employers,
20 tracking advertisements, updating a resume, etc.), and given that
21 she did put forth some minimal effort in looking, I award plaintiff
22 six months of lost past wages. Based on her monthly salary of
23 \$2,618.08, her award is \$15,708.48.

24 As part of her lost past wages claim, plaintiff also seeks the
25 value of certain stock options she lost upon termination. At the
26 time of her termination in January 2004, she held two stock option
27 awards. Exh. 68. The first was for 300 shares, exercisable at a
28 price of \$21.68 per share. Id. The second was for 50 shares,

1 exercisable at a price of \$8.38 per share. Id.

2 According to the undisputed testimony of defendant's Regional
3 Vice-President Ken Roscoe, defendant's stock never exceeded a price
4 of \$21.68 per share in the last few years. The average price
5 during this time period was about \$15 per share with a high of \$19
6 per share at one point. Based on Roscoe's testimony, I award
7 plaintiff no damages for the loss of her 300 share stock option.
8 Given that the share price never exceeded her exercise price, it is
9 more probable than not that she would not have exercised the option
10 to purchase those shares. For the 50 share option, however, I
11 award plaintiff the difference between her exercise price of \$8.38
12 per share and the high value of \$19 per share, or \$10.62 per share.
13 For the 50 shares, the sum is \$531.

14 Plaintiff's total economic damages award is \$16,239.48.

15 CONCLUSION

16 I find for plaintiff on her O.R.S. 659A.030 claim and I award
17 plaintiff economic damages on her Title VII and O.R.S. 659A.030
18 claims in the amount of \$16,239.48.

19 IT IS SO ORDERED.

20
21 Dated this 11th day of August, 2006.

22
23
24 /s/ Dennis James Hubel
25 Dennis James Hubel
26 United States Magistrate Judge
27
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